

SECTION 20.0 Export Control Reform

20.1 General Guidance

- a. The procedures in this chapter are intended to help the applicant implement the requirements of the various Federal Register Notices pertaining to Export Control Reform (ECR).
- b. For the purposes of this section: “transitioning” means transitioning from USML to Commerce Control List (CCL); “items” means hardware, software, technical data and defense services controlled in the USML subcategories; and “USML hardware” means all defense articles in §121.1 except for technical data and subcategory (x) commodities, software and technical data.
- c. In addition to moving many USML commodities to the CCL and changing USML subcategories, ECR also adds the (x) subcategory. The (x) subcategory is in each USML category and allows, in certain circumstances, exporters to obtain an authorization from DDTC for the export of commodities, software and technical data controlled on CCL. With some restrictions, agreements and IFO licenses may use the (x) subcategory on or after the effective date of the relevant final rules that revise the USML.
- d. The (x) subcategory may only be used in agreements that involve the export of USML hardware. Agreements that do not involve the export of USML hardware may not include authorization for (x) subcategory commodities, software and technical data.
- e. Expiration dates listed on DDTC authorizations may not necessarily be accurate if the authorizations contain transitioning items. See Table 20.1 and the relevant Federal Register Notices to determine if a license or agreement will become invalid prior to the expiration date listed on the DDTC authorization.
- f. Amendments to agreements to remove transitioning items or to revise the agreement to change the transitioning items to (x) subparagraph may be submitted as minor amendments if the only changes are the removal of transitioning items, the movement of commodities from the USML to the CCL, or the implementation of changes listed in Section 6.3. ECR changes may result in a devaluation of the agreement, but a devaluation based solely on the value of transitioned items does not require a major amendment. If anything is being added in conjunction with the ECR amendment—e.g., an increase in scope, value, parties, or territories—a major amendment is required. If the ECR amendment results in scope clarifications or changes to the parties’ roles and responsibilities, a major amendment is required.
- g. Agreement values must not include the value of the (x) subcategory commodities, software or technical data. The hardware value of the agreement will only include USML hardware.

- h. Table 20.1 provides general guidance for submitting agreements, amendments, and IFO licenses affected by ECR.

Table 20.1 Submissions During ECR Transition

	Prior to Effective Date of Relevant Final Rule	On Effective Date of Relevant Final Rule	> 2 Years After Effective Date of Relevant Final Rule
New Agreements and Major Amendments	Can be submitted normally. Expiration dates may not be accurate if agreement contains transitioning items.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.
Existing Agreements Containing No Transitioning Items	No change.	No change. An amendment is not required solely to correct USML subcategories. USML subcategories must be corrected whenever the applicant submits the next major amendment.	Agreement is valid until its expiration date. USML subcategories must be corrected whenever the applicant submits the next major amendment.
Existing Agreements Containing Transitioning and Non-Transitioning Items	No change.	Valid until whichever comes first: expiration; full execution of an amendment incorporating ECR; or two years after effective date of relevant final rule.	Agreement is no longer valid unless it has been amended.
Existing Agreements Containing Solely Transitioning Items	No change.	Valid for two years, unless agreement expires before that time.	Agreement is no longer valid (see Note 1).
New IFO Licenses	Can be submitted normally. Expiration dates may not be accurate if license contains transitioning items.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.

Existing DSP-5 IFO Licenses Containing No Transitioning Items	No change.	Valid until expired.	Valid until expired.
Existing DSP-5 IFO Licenses Containing Transitioning and Non-Transitioning Items	No change.	Valid until expired.	Valid until expired.
Existing DSP-5 IFO Licenses Containing Solely Transitioning Items	No change.	Valid until expired or until two years after effective date of relevant final rule, whichever occurs first.	No longer valid.
Existing DSP-61 and DSP-73 IFO Licenses	No change.	Valid until expired.	Valid until expired.

Note 1: If an existing agreement contains “solely transitioning items,” this table assumes that defense services as defined in §120.9 are no longer being exported, and therefore no agreement is necessary for the export of defense services. (The agreement is still valid for two years after the effective date of the relevant final rule.) However, if defense services are still required even though all the agreement’s hardware has transitioned to the CCL, the previous row of the table applies, and the agreement is considered to contain both transitioning and non-transitioning items.

20.2 Transmittal Letters

- a. After the effective date of the relevant final rule revising a USML Category, transmittal letters for agreements and amendments must identify the updated USML subcategories, including the (x) subcategory, if applicable. It is the applicant’s option whether or not to include the (x) subcategory in an agreement/amendment, but the applicant must include the (x) subcategory in the agreement/amendment if IFO licenses containing subcategory (x) will be requested. Including Export Control Classification Numbers (ECCNs) for CCL items is not required, but may speed up processing times.

- b. The (a)(6) table must not include the value of (x) subcategory hardware. The hardware value for the agreement will only include USML hardware in accordance with Table 3.1.
- c. In many cases, the transition of USML commodities to the CCL may result in a reduction in value for an agreement. A reduction in value based on ECR does not require a major amendment, if the conditions of Section 20.1.e are met. However, when submitting a major amendment that happens to have a reduction in value, the applicant should indicate the value changes in three-column format, in accordance with Table 6.1. Block 12 of the DSP-5 vehicle cannot accept negative numbers, so the applicant should enter \$1 in block 12.
- d. If an agreement has been congressionally notified and subsequently loses value as a result of ECR, the agreement will be re-notified when the value reaches 10% or more of the previous notification value. Other reasons for re-notification listed in Section 14.1.c still apply.

20.3 Agreements and Amendments

- a. Section 124.7(1) of the agreement/amendment must include a description of all hardware to be exported in furtherance of the agreement, including subcategory (x) hardware, if applicable. Section 124.7(1) must delineate between hardware subject to the USML and the CCL if the applicant wishes to submit IFO licenses that include subcategory (x). Section 124.7(2) of the agreement/amendment may require modification based on the proposed changes to definitions of defense services and technical data, as well as the underlying determination of what constitutes a defense article in accordance with §121.1 and §120.41.
- b. For existing agreements containing transitioning and non-transitioning items, the applicant must submit an amendment to incorporate the ECR changes within two years of the effective date of the relevant final rule, or else the agreement becomes invalid. This may be a minor amendment if the change meets the conditions of Section 20.1.e.
- c. Existing agreements containing no transitioning items do not require amendment, even if the relevant USML subcategories change. As long as the agreement contains no transitioning items, the agreement is valid until its expiration date.
- d. Applicants may submit minor amendments without making any ECR changes. Submitting a minor amendment does not change the time frame for agreement validity based on Table 20.1. Whether or not the applicant has submitted a non-ECR minor amendment, the applicant must still submit an amendment to capture ECR changes, if required according to Table 20.1.
- e. Major amendments received after the effective date of the final rule must reflect ECR changes.

20.4 Licenses in Furtherance of Agreements

- a. The existing agreement/amendment does not need to be amended to allow IFO licenses using the new USML subcategories, as long as the agreement is still valid according to Table 20.1. For example, suppose an existing agreement contains transitioning and non-transitioning items in categories VIII(b), VIII(h), and VIII(i). The applicant wishes to export categories VIII(b) and VIII(h) IFO the agreement, and these items happen to be transitioning to categories XIX(a)(1), VIII(h), and VIII(x). After the effective date of the relevant final rule (in this case, October 15, 2013), the applicant could submit a license IFO this agreement to export Categories VIII(h), VIII(x), XIX(a)(1) even though the agreement still references hardware categories VIII(b) and VIII(h). In accordance with Table 20.1, however, this option would cease on October 16, 2015 if no amendment to the agreement were submitted, approved, and executed.
- b. For agreements containing subcategory (x), IFO licenses may include subcategory (x), if desired. If the agreement has not yet been amended but is still valid and contains commodities that are subject to the CCL, IFO licenses may also include subcategory (x) commodities, software, or technical data, if desired. The restrictions of Section 20.1.c and §123.1(b) still apply.
- c. IFO licenses containing exclusively subcategory (x) commodities, software, or technical data are not permissible. In accordance with §123.1(b), licenses may only include subcategory (x) if the license also includes a proposed export of defense articles authorized by the agreement and the (x) commodities, software, or technical data are for end-use in or with the defense articles proposed for export.
- d. If the applicant submits a license IFO an agreement, in which the categories or subcategories do not match, the applicant must, in the letter of explanation submitted with the IFO license, clarify which previously authorized hardware has changed categories or subcategories. Including ECCNs for CCL items is not required, but may speed up processing times.
- e. IFO license values must include the value of subcategory (x) items, for AES and Customs purposes. However, only the value of the USML hardware on the IFO licenses will be decremented against the licensed hardware value for the agreement. The IFO letter of explanation must not include subcategory (x) values: the previously approved value statement, remaining value statement, and summary table of previous authorizations must only include USML hardware values. DDTC understands that this will result in a discrepancy between previous authorization values listed in the IFO letter of explanation and the values submitted via DTrade.
- f. All other requirements of Section 15 of these guidelines, to include purchase order, letter of intent, contract, or request for goods, continue to apply to IFO licenses containing subcategory (x).